

## **Summary of SC94999, *IBM Corporation v. Director of Revenue***

On review from the administrative hearing commission; Commissioner Sreenivasa Rao  
Dandamudi

Argued and submitted January 12, 2016; opinion issued April 5, 2016

**Attorneys:** The director was represented by Deputy Solicitor General Jeremiah J. Morgan and Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321. IBM was represented by Booker T. Shaw of Thompson Coburn LLP in St. Louis, (314) 552-6087; James B. Deutsch, Marc H. Ellinger and Stephanie S. Bell of Blitz, Bardgett & Deutsch LC in Jefferson City, (573) 634-2500; and Scott A. Browdy of Ryan Law Firm LLP in Chicago, (512) 459-6600.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The director of review seeks review of the administrative hearing commission's decision that a corporation is entitled to a use tax refund under a statutory "manufacturing" exemption for its sales of hardware and software to a credit card company. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the commission's decision. The corporation is not entitled to the exemption. Exemptions must be construed strictly, not broadly. The credit card company's use of the hardware and software does not qualify as the "manufacturing of a product" according to its plain and ordinary meaning.

**Facts:** Section 144.054.2, RSMo, provides an exemption from use tax for "equipment and materials used or consumed in the manufacturing, processing, compounding, mining, or producing of any product ...." MasterCard International LLC purchased computer hardware and software from IBM Corporation for use in providing various financial services to its customers. IBM sought a refund of the use tax it paid, arguing these sales were exempt from use tax because MasterCard's use of the hardware and software qualified as "manufacturing a product." The commission granted IBM a refund, finding that MasterCard's activities were the "manufacturing of a product" under section 144.054.2. The director appeals.

## **REVERSED.**

**Court en banc holds:** MasterCard's activities do not qualify as "manufacturing" under section 144.054.2. While the production of intangible products such as computer data may be "manufacturing" in certain circumstances, not every use of computer hardware and software to aid a business or transmit information is "manufacturing." The commission's use of a broad interpretation of the term "manufacturing" in section 144.054.2 was error, and to the extent a few prior cases suggest the exemption authorizes an expansive interpretation of "manufacturing," they no longer should be followed. It long has been the rule that exemptions are to be construed strictly against the taxpayer and according to their plain meaning. MasterCard's activities in this case are the transmitting and processing of credit card data. This does not qualify as "manufacturing" under the plain meaning of that term. Had the legislature wished to include this type of activity within the exemption it easily could have done so, but it did not. The exemption is inapplicable.